



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

implied from long acquiescence therein by the stockholders.<sup>11</sup> After ratification of, or long continued acquiescence in, the contract by the stockholders, it becomes binding and cannot thereafter be avoided.<sup>12</sup> If the directors or other interested officers own a majority of the stock, mere ratification by the majority is not sufficient, and the transaction may be reviewed in equity, at the instance of the minority.<sup>13</sup> If the contract is partly performed and then avoided by the *cestuis que trustent*, the director is allowed to recover for the reasonable value of his services, etc., under the contract, provided he has acted in good faith throughout.<sup>14</sup> But the burden of ascertaining and of proving the amount reasonably due is on the director himself.<sup>15</sup>

---

PARTNERSHIP REALTY—CONVERSION.—Upon the dissolution of a partnership, the question generally arises as to the extent of application of the equitable doctrine that real estate purchased with partnership funds for partnership purposes is converted into personalty.

In England, after much conflict of authority, it has become settled that realty acquired with partnership funds for partnership purposes is converted into personalty, not only for all purposes properly connected with the settlement of partnership affairs, and for the settlement of claims between the partners (including the representative of a deceased partner), but also as between the heirs of a deceased partner and his personal representative.<sup>1</sup> And to save further doubt, this doctrine is now declared by statute.<sup>2</sup> This result was reached by considering all partnerships launched with the implied agreement that upon dissolution all its property should be sold.<sup>3</sup>

In this country, the English doctrine has been followed by the State of Virginia.<sup>4</sup> In all other States, however, the courts have adopted a rule which considerably modifies the English doctrine, upon the reasoning that the presumed agreement of the partners is that the realty is to be sold only so far as is necessary for firm

---

<sup>11</sup> *Warren v. Para Rubber Shoe Co.*, 166 Mass. 97, 44 N. E. 112; *Hodge v. U. S. Steel Corporation*, 64 N. J. Eq. 807, 54 Atl. 1.

<sup>12</sup> *Battele v. Northwestern Cement & Paving Co.*, 37 Minn. 89, 33 N. W. 327; *Gorder v. Plattsmouth Canning Co.*, 36 Neb. 548, 54 N. W. 830.

<sup>13</sup> *Booth v. Land, etc., Imp. Co.*, 68 N. J. Eq. 536, 59 Atl. 767.

<sup>14</sup> *Griffith v. Blackwater Boom & Lumber Co.*, *supra*.

<sup>15</sup> *Booth v. Land, etc., Imp. Co.*, *supra*.

<sup>1</sup> *Darby v. Darby*, 3 Drew 495, 25 L. J. Ch. 211, 61 Eng. Reprint 992.

<sup>2</sup> Eng. Par. Act, 1890, 53 & 54 Vict., ch. 39.

<sup>3</sup> *Darby v. Darby*, *supra*.

<sup>4</sup> *Pierce v. Trigg*, 10 Leigh (Va.) 406; *Deering v. Kerfoot*, 89 Va. 491. See 4 VA. LAW REC. 310. There is dictum in *Mann v. Paddock*, 108 Va. 827, to the effect that the rule in Virginia is yet unsettled, so that the courts may be at liberty ultimately to adopt the rule which generally prevails in the United States.

purposes.<sup>5</sup> The recent case of *Fooks v. Williams* (Md.), 87 Atl. 692, states in general terms the American rule: Land acquired with partnership funds for partnership purposes is, in a court of equity, converted into personalty as to the partnership, partners, and creditors of the firm; but for all other purposes it is realty. In other words, it is assets of the firm, and to such extent is regarded as personalty. The American courts, while following the English doctrine thus far, have held that for all purposes other than the settlement of partnership affairs partnership realty retains its character as real estate.

Upon the death of one partner, legal title *pro tanto* passes to his heirs, and the tenure by which the lands are held is not changed.<sup>6</sup> The heirs, however, have no present beneficial interest in the land as land, which is regarded as partnership stock, but only a remote beneficial interest in the surplus after the settlement of partnership debts; they having no greater right than their ancestor had. This legal title is held by them in trust for the surviving partner, who is charged with the payment of all partnership debts.<sup>7</sup> Until the close of administration, the surviving partner holds the beneficial interest, for the settlement of firm debts, adverse to and exclusive of the heirs, and partition will not lie until the firm is wound up.<sup>8</sup> The surviving partner may sell the partnership realty for the purpose of paying the firm debts, transferring an equitable title. With this equitable title, the transferee may, in a court of equity, compel a conveyance from the heirs or devisees.<sup>9</sup> It has been held in Alabama that where partnership realty has been converted "out and out" into personalty, the surviving partner may convey perfect title as against the heirs of the deceased partner—certainly so where the agreement to consider a conversion for all purposes is a matter of record.<sup>10</sup>

It is settled in America that as between the heir and the personal representative, the share of a deceased partner remaining after the payment of all partnership debts, and the adjusting of equitable claims of the different members of the firm as between themselves, is considered and treated as realty, the heir taking, and not the personal representative.<sup>11</sup>

The question whether or not the widow of a deceased partner is entitled to dower in the partnership realty is also dependent upon the extent of application of this rule of conversion. She cannot be dowerable out of personalty, and so long as the lands are considered as personalty she is not entitled to dower. Her dower can never

<sup>5</sup> *Shearer v. Shearer*, 98 Mass. 107.

<sup>6</sup> *Butts v. Cooper* (Ala.), 44 So. 616.

<sup>7</sup> *Dyer v. Clark*, 5 Met. (Mass.) 562, 39 Am. Dec. 697; *Priest v. Chocteau*, 85 Mo. 398, 55 Am. Rep. 373.

<sup>8</sup> *Holton v. Guinn*; 65 Fed. 450; *Hartnett v. Stillwell*, 121 Ga. 386.

<sup>9</sup> *Shanks v. Klein*, 104 U. S. 18; *Andrews v. Brown*, 21 Ala. 437.

<sup>10</sup> *Davis v. Smith*, 82 Ala. 198.

<sup>11</sup> *Shanks v. Klein*, *supra*; *Brewer v. Brown*, 68 Ala. 210; *Darrow v. Calkins*, 154 N. Y. 503.

attach until the partnership is terminated, and its affairs completely wound up.<sup>12</sup> Since by the American rule such lands are considered as personalty only for partnership purposes, as soon as the affairs of the partnership are settled, the widow is entitled to dower in the surplus.<sup>13</sup> In England, however, where the conversion is out and out, and the partnership realty is considered as personalty even after the settlement of partnership affairs, it is of course at no time subject to dower.<sup>14</sup>

The conveyance of real estate is an act so closely pertaining to the inherent nature of the land itself that it is unaffected by this doctrine of conversion, and the same formalities are required for the conveyance of partnership real estate as of that of an individual.<sup>15</sup> And it never becomes personalty, even during the continuance of the firm, so as to give one partner power to dispose of the firm's legal interest in it.<sup>16</sup>

While in America, in the absence of agreement to the contrary, partnership realty is converted into personalty only *pro tanto* for the purpose of partnership equities, yet if it can be clearly shown that it was the partners' intention to regard it as personalty, not only for partnership, but for all purposes, effect will be given by the courts to such intention.<sup>17</sup> The partners are thus allowed to extend by agreement the doctrine of conversion as far as is allowed by the English doctrine. And such agreement may be implied upon consideration of all the facts, including the nature of the partnership business, the character and extent of the realty involved, and the partners' mode of treating and considering it.<sup>18</sup>

ADMISSIBILITY IN CRIMINAL CASES OF EVIDENCE ILLEGALLY OBTAINED.—The doctrine that an accused person cannot be compelled to testify against himself was early incorporated into the common law of England,<sup>1</sup> probably because of the revolt against the barbarous trials of thumb-screw days.<sup>2</sup> This doctrine, together with the prohibition of "unreasonable searches," was made a part of the United States Constitution,<sup>3</sup> and of the constitutions of nearly all of the States. These provisions are held to prohibit forcing the

<sup>12</sup> *Mallory v. Russell*, 71 Iowa 63, 60 Am. Rep. 776; *Willet v. Brown*, 65 Mo. 138, 27 Am. Rep. 265.

<sup>13</sup> *Lenow v. Fones*, 48 Ark. 557; *Woodward-Holmes Co. v. Nudd*, 58 Minn. 236, 27 L. R. A. 340.

<sup>14</sup> *Essex v. Essex*, 20 Beav. 442, 52 Eng. Reprint 674.

<sup>15</sup> *Butts v. Cooper*, *supra*; *Fooks v. Williams*, *supra*.

<sup>16</sup> *Davis v. Christian*, 15 Gratt. (Va.) 11.

<sup>17</sup> *Holmes v. Self*, 79 Ky. 297.

<sup>18</sup> *Lowe v. Lowe*, 76 Ky. (13 Bush) 688; *Rosenbaum v. City of New York*, 109 N. Y. Supp. 775; *Buckley v. Doig*, 188 N. Y. 238; *Wilson v. Wilson*, 74 S. C. 30. But see *Hale v. Henrie*, 2 Watts (Pa.) 143, 27 Am. Dec. 289: Agreement must be by deed or writing placed on record.

<sup>1</sup> *Entick v. Carrington*, 19 How. St. Tr. 1030.

<sup>2</sup> 5 HARV. L. REV. 71.

<sup>3</sup> 4th. and 5th. Amendments.